## Appendix A

MICHAEL BILIRAKIS, FLORIDA
JOE BARTON, TEXAS
FRED UPTON, MICHIGAN
CLIFE STEARNS, FLORIDA
PAUL E. GILLMOR, OHIO
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JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN ST. STENSIEL
TORING MISSISSIPPI
VITO FOSSELLA, NEW YORK
ROY BLUNT, MISSOURI
TOM DAVIS, VIRGINIA
ED BRYANT, TENNESSEE
ROBERT L. EHRLICH, JP., MARYLAND
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
CHARLES F. BASS NEW HAMPSHIPE
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONC, CALIFORNIA
GREG WALDEN, NEBRASKA

ONE HUNDRED SEVENTH CONGRESS

## U.S. House of Representatives Committee on Energy and Commerce Washington, DC 20515-6115

W.J. "BILLY" TAUZIN, LOUISIANA, CHAIRMAN

January 18, 2002

JOHN D DINGELL MICHIGAN
HENRY A WAXMAN CALIFORNIA
EDWARD J MARKEY MASSACHUSETTS
RALPH M HALL TEXAS
RICK BOUCHER VIRGINIA
EDOLPHUS TOWNS NEW YORK
FRANK PALLONE UP NEW JERSEN
SHEPROD BROWN OHO
BART GORDON TENNESSEE
PETER DEUTSCH FLORIDA
BOBBY RISH ILLING S
ANNA G ESHOO CALIFORNIA
BART STUPAK MOT SAN
EUCT J ENGEL NEW YORK
TOM SAWVER OHO
ALBERT R WYNN MARYLAND
GENE GREEN TEXAS
KAREN MICARTHY MISSOLR
TEL STRICKLAND OHO
CANA DIEGETTE COLORADO
THOMAS M BARRETT WISCONSIN
BLILL THER MINNESCTA
LC S CAPPS CALIFORNIA
MICHAEL FOOLLE PENNINEVANIA
CHEST CHER MON

DAVID VIMARVENTANCI STAFF DIRECTOR

Mr. Peter Dolan Chairman and Chief Executive Officer Bristol-Myers Squibb World Headquarters 345 Park Avenue New York, New York 10154-0037

Dear Mr. Dolan:

The Subcommittee on Oversight and Investigations is investigating questions about the conduct of ImClone Systems, Inc. in the development of its colorectal cancer drug, Erbitux (also known as C225 or Cetuximab).

ImClone Systems and Erbitux are internationally known, having been featured on the CBS program "60 Minutes" and the international cover story for the July 30, 2001 issue of Business Week. One reason Erbitux received such attention is that, according to Business Week, this drug was "the furthest along of a handful of new cancer treatments that precisely home in on a growth signal found in up to 50% of all cancer types." In clinical trials, "the drug demonstrated remarkable success in causing colon cancer to regress in patients who had failed to respond to all other treatments." Such promise apparently prompted thousands of cancer patients to try to obtain Erbitux either through clinical trial enrollment or "compassionate use" access. For example, USA Today reported that ImClone had received 400 calls a day from patients desperate to get Erbitux outside clinical trials.

In September 2001, Bristol-Myers Squibb bought 20 percent of ImClone for \$1 billion and agreed to pay as much as \$1 billion more to obtain the marketing rights to Erbitux. On October 30, 2001, ImClone submitted its biologics license application for Erbitux. On December 17, 2001, ImClone was one of seven biotechnology companies included for the first time in the NASDAQ 100 index. Excitement and confidence in ImClone was reflected in such media reports as a Reuters article in the December 26, 2001 Los Angeles Times which proclaimed, "Erbitux, a colon cancer treatment from ImClone Systems Inc., is set to make one of the biggest splashes of 2002."

Therefore, many observers were stunned to learn that on December 28, 2001, the FDA had issued a "refuse-to-file" (RTF) letter in response to the ImClone submission. The RTF letter, sent in rare cases when a submission is deemed insufficient, is a non-public document containing trade secret or confidential commercial information. According to Adam Feuerstein's column in TheStreet.com, in "its December 31, 2001 conference call, ImClone executives said that FDA regulators sent the RTF letter because the Erbitux application was missing certain 'train of documentation' information needed by regulators to accept the filing. ImClone said it would be able to answer the FDA questions by the end of the first quarter, leading, hopefully to an approval of Erbitux in the fall." On the first trading day after the issuance of the RTF letter, ImClone's shares fell \$11.15, or 20% to \$44.10 per share.

On January 4, 2002, the Cancer Letter published excerpts of the RTF letter indicating that the FDA had greater concerns about ImClone's data than company executives stated in the December 31st conference call with analysts and investors. As Adam Feuerstein noted, "if the Cancer Letter does have a correct copy of the RTF letter, it suggests that ImClone executives have not given investors and Wall Street analysts a full picture of the Erbitux problems." The Cancer Letter article reported that the RTF letter detailed a long list of FDA concerns that went far beyond record keeping. The FDA was quoted as saving that ImClone's clinical trial was "not adequate and well controlled" and that additional studies would be needed. Moreover, the letter suggested that the FDA had warned ImClone starting in August 2000 that its data would have to demonstrate that Campostar, another cancer drug, was needed along with Erbitux. But the data submitted by ImClone was not sufficient to distinguish the effects of Campostar and Erbitux. Furthermore, the FDA cited protocol violations in the clinical trial, specifically the fact that ImClone only reported the deaths of three patients who died within a month of their last Erbitux treatment. The FDA found 21 patients who died within a month of their last Erbitux treatment. According to the January 8, 2002 New York Times, David Hines, president of the Avalon Research Group, said, "The FDA's communications with the company appear directly at odds with the statements made by the company in 2001." After the Cancer Letter report appeared, the price of ImClone shares fell further to open on January 7, 2002 at \$34.96 per share.

On January 9, 2002, after ImClone had lost nearly \$1.5 billion in market value since December 28 and after the filing of at least 11 federal class action suits, Sam Waksal, the ImClone president and CEO, attempted to explain the company's situation at the J.P. Morgan H&Q Healthcare conference. "What happened was that we put together a faulty package and we screwed up," Waksal reportedly said. The principal problem, he said, was the company's failure to provide documentation demonstrating that the patients enrolled in ImClone's pivotal trial had met the eligibility criteria. On January 11, 2002, the Cancer Letter published an article on the conference and raised more questions about Waksal's explanations of what went wrong. For example, Waksal said that the problems were caused by the Independent Response Assessment Committee (IRAC), a group of two radiologists and two oncologists who reviewed the data from the trial's sites. However, the Cancer Letter article cites Howard Ozer, director of Oklahoma University Cancer Center and Eason chair of oncology and hematology, who said blaming the review committee is disingenuous. "It is not the IRAC's fault," said Ozer, who reviewed the

Mr. Peter Dolan Page 3

RTF letter for The Cancer Letter. "IRAC would have done whatever they were asked to do." The committee was working for the company, which means that the company bears the ultimate responsibility, Ozer said. "They would know when IRAC is screwing up, and they would immediately report back," Ozer said. "Companies do it in self-defense, so this kind of thing doesn't happen."

Adding to the controversy are sales of stock by ImClone executives in the weeks just before FDA issued the RTF letter. According to the January 9, 2002 Wall Street Journal, ImClone's Chief Operating Officer, Harlan Waksal, disposed of 700,000 ImClone shares on December 6, valued at roughly \$71 a share or about \$50 million in total. On October 29, 2001, ImClone executives and directors sold a combined 2.1 million company shares to Bristol-Myers for \$150 million. Samuel Waksal sold 814,674 shares and Harlan Waksal sold 776,450 shares. or just more than 20% of each of their holdings, in the first sale by either executive since the mid-1990's. The sales were part of a tender offer by Bristol-Myers at the end of October in connection with the strategic agreement with ImClone. (In contrast to the \$2 billion agreement with Bristol-Myers for the US market, we note that it appears ImClone made only a \$60 million agreement with Merck KGaA for the right to market Erbitux outside North America and Japan, according to ImClone's 10-Q SEC filing). As part of the tender offer, the Waksals and other insiders – along with all other shareholders – were allowed to tender shares. However, according to the Wall Street Journal, ImClone lent money to insiders so they could acquire shares through the exercise of options at a time when discussions with Bristol-Myers "were well under way (having started in May) but weren't publicly disclosed." Along with the Waksals, ImClone extended loans to the company's chairman and another director, totaling \$35.2 million during - July and August. As one observer noted in the Wall Street Journal article, that select insiders were able to borrow money from the company in order to acquire shares "puts shareholders at a disadvantage."

Given these recent reports, we have several serious concerns. Available information seems to conflict with ImClone's descriptions of the contents of FDA's RTF letter and its clinical research. The RTF letter is not a public document; investors only learned about the details from the excerpts of the RTF letter reported in the Cancer Letter. Without the Cancer Letter article, investors would have had to rely on ImClone's questionable descriptions of the RTF letter.

We are also interested in learning about the true nature of the pivotal clinical trial for Erbitux, and whether ImClone knew or should have known about the insufficiencies detailed in FDA's RTF letter. It is important that the hopes of cancer patients are not falsely raised and that the integrity of biomedical research is maintained. The available information demands that this Committee, which is entrusted with the oversight of public health and consumer protection laws, get additional information about ImClone and the Erbitux matter.

In light of these concerns, pursuant to Rules X and XI of the U.S. House of Representatives, please provide the following by January 31, 2002:

- 1. All records relating to communications about the FDA's December 28, 2001 refusal-to-file letter regarding ImClone's Erbitux.
- 2. A list of the individuals involved in Bristol-Myers Squibb's (BMS) due diligence review of ImClone Systems. Please describe how BMS organized its due diligence efforts regarding ImClone Systems.
- 3. Internal audits, internal investigations, and/or reports relating to ImClone Systems.
- 4. Did BMS draw on the expertise of its Oncology Advisory Board to assess the Erbitux data before the ImClone deal was completed? If not, why not? What information did BMS rely on in assessing the Erbitux data?
- 5. All records relating to the October 26, 2001 briefing before the BMS Oncology Advisory Board concerning Erbitux.

Please note that, for the purpose of responding to these requests, the terms "records" and "relating" should be interpreted in accordance with the attachment to this letter. In addition, we are requesting that following production of the records to the Committee, you make available Bristol-Myers Squibb employees for Committee staff interviews as requested by Committee staff.

Thank you for your assistance. If you have any questions, please contact Alan Slobodin of the Majority Committee staff at (202) 225-2927.

Sincerely,

W.J. "BILLY" TAUZIN CHAIRMAN

JAMES C. GREENWOOI

CHAIRMAN

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

cc:

The Honorable John D. Dingell, Ranking Minority Member The Honorable Peter Deutsch, Ranking Minority Member Subcommittee on Oversight and Investigations

Attachment

#### ATTACHMENT

- The term "records" is to be construed in the broadest sense and shall mean any 1. written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intraoffice and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
- 2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

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EUCT L'ENGEL NEW YORK
TOM SAWVER OME
ALBERT E WANN MARNIANT
GENE BREEN TEXAS
MARINM TARTHIN MISSOLR
TEO STRICKLAND OHD
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DAVID C MARKENTANC STARK LIRECTOR

Dr. Bernard Schwetz, D.V.M., Ph.D. Acting Commissioner Food and Drug Administration 5600 Fishers Lane Rockville, MD 20857

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Dr. Bernard Schwetz, D.V.M., Ph.D. Page 2

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Dr. Bernard Schwetz, D.V.M., Ph.D. Page 3

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Given these recent reports, we have several serious concerns. Available information seems to conflict with ImClone's descriptions of the contents of FDA's RTF letter and its clinical research. The RTF letter is not a public document; investors only learned about the details from the excerpts of the RTF letter reported in the Cancer Letter. Without the Cancer Letter article, investors would have had to rely on ImClone's questionable descriptions of the RTF letter. The FDA's statute and regulations appear to inhibit the agency on its own from disclosing some, if not all, of the RTF letter or other similar, relevant information to the Securities and Exchange Commission (SEC) when there are concerns about the accuracy and completeness of company's descriptions of FDA actions. We note that Section 301(i) of the Federal Food, Drug, and Cosmetic Act prohibits the "revealing, other than to the Secretary or officers or employees of the Department . . . any information . . . concerning any method or process which as a trade secret is entitled to protection." Therefore, according to FDA's Regulatory Procedures Manual, FDA may not share trade secret information with federal government agencies outside the Department of Health and Human Services unless the submitter of the trade secret consents in writing. Under 21 C.F.R. section 20.85 any FDA records exempt from public disclosure may be disclosed to other Federal government departments and agencies, except that trade secrets and confidential commercial or financial information prohibited from disclosure by 21 USC 331(j) . . . may be released only as provided by these sections. For the

Dr. Bernard Schwetz, D.V.M., Ph.D. Page 4

-sake of protecting patients and investors from deception, we are interested in learning whether FDA laws need to be clarified to permit the FDA on its own accord, and in appropriate circumstances, to share non-public information with other federal agencies.

We are also interested in learning about the true nature of the pivotal clinical trial for Erbitux, and whether ImClone knew or should have known about the insufficiencies detailed in FDA's RTF letter. It is important that the hopes of cancer patients are not falsely raised and that the integrity of biomedical research is maintained. The available information demands that this Committee, which is entrusted with the oversight of public health and consumer protection laws, get additional information about ImClone and the Erbitux matter.

In light of these concerns, pursuant to Rules X and XI of the U.S. House of Representatives, please provide the following by January 31, 2002:

- 1. All records relating to the December 28, 2001 refusal-to-file letter for ImClone Systems' biological license application for Erbitux.
- 2. All records relating to meetings between FDA and ImClone Systems concerning Erbitux.
- 3. All records relating to study CP02-9923, especially the study protocol.
- 4. All records relating to communications about the biological license application for Erbitux since October 29, 2001.
- 5. The most current legal analysis of relevant federal statutes and regulations concerning FDA disclosure of non-public information to the Securities and Exchange Commission (SEC). If no such analysis exists, please provide an explanation to the Committee of the circumstances, and for what categories of non-public information, that FDA on its own initiative may provide to the SEC. Please advise the Committee on whether FDA has had contact with the SEC on the ImClone/Erbitux matter and, if there was contact, appropriate details about the nature of the contact.

Please note that, for the purpose of responding to these requests, the terms "records" and "relating" should be interpreted in accordance with the attachment to this letter. In addition, we are requesting that following production of the records to the Committee, you make available FDA employees for Committee staff interviews as requested by Committee staff.

Thank you for your assistance. If you have any questions, please contact Alan Slobodin of the Majority Committee staff at (202) 225-2927.

Dr. Bernard Schwetz, D.V.M., Ph.D. Page 5

Sincerely,

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

cc:

The Honorable John D. Dingell, Ranking Minority Member The Honorable Peter Deutsch, Ranking Minority Member Subcommittee on Oversight and Investigations

Attachment

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CHRISTOPPER JOHN LOUISIANA
JANE HARMAN. CALIFORNIA

DAVID V MARVENTANO STAFF DIRECTOR

Dr. Samuel Waksal President and Chief Executive Officer ImClone Systems, Inc. 180 Varick Street New York, New York 10014

Dear Dr. Waksal:

The Subcommittee on Oversight and Investigations is investigating questions about the conduct of ImClone Systems. Inc. in the development of its colorectal cancer drug, Erbitux (also known as C225 or Cetuximab).

ImClone Systems and Erbitux are internationally known, having been featured on the CBS program "60 Minutes" and the international cover story for the July 30, 2001 issue of Business Week. One reason Erbitux received such attention is that, according to Business Week, this drug was "the furthest along of a handful of new cancer treatments that precisely home in on a growth signal found in up to 50% of all cancer types." In clinical trials, "the drug demonstrated remarkable success in causing colon cancer to regress in patients who had failed to respond to all other treatments." Such promise apparently prompted thousands of cancer patients to try to obtain Erbitux either through clinical trial enrollment or "compassionate use" access. For example, USA Today reported that ImClone had received 400 calls a day from patients desperate to get Erbitux outside clinical trials.

In September 2001, Bristol-Myers Squibb bought 20 percent of ImClone for \$1 billion and agreed to pay as much as \$1 billion more to obtain the marketing rights to Erbitux. On October 30, 2001, ImClone submitted its biologics license application for Erbitux. On December 17, 2001, ImClone was one of seven biotechnology companies included for the first time in the NASDAQ 100 index. Excitement and confidence in ImClone was reflected in such media reports as a Reuters article in the December 26, 2001 Los Angeles Times which proclaimed, "Erbitux, a colon cancer treatment from ImClone Systems Inc., is set to make one of the biggest splashes of 2002."

Therefore, many observers were stunned to learn that on December 28, 2001, the FDA had issued a "refuse-to-file" (RTF) letter in response to the ImClone submission. The RTF

letter, sent in rare cases when a submission is deemed insufficient, is a non-public document containing trade secret or confidential commercial information. According to Adam Feuerstein's column in TheStreet.com, in "its December 31, 2001 conference call, ImClone executives said that FDA regulators sent the RTF letter because the Erbitux application was missing certain 'train of documentation' information needed by regulators to accept the filing. ImClone said it would be able to answer the FDA questions by the end of the first quarter, leading, hopefully to an approval of Erbitux in the fall." On the first trading day after the issuance of the RTF letter, ImClone's shares fell \$11.15, or 20% to \$44.10 per share.

On January 4, 2002, the Cancer Letter published excerpts of the RTF letter indicating that the FDA had greater concerns about ImClone's data than company executives stated in the December 31st conference call with analysts and investors. As Adam Feuerstein noted, "if the Cancer Letter does have a correct copy of the RTF letter, it suggests that ImClone executives have not given investors and Wall Street analysts a full picture of the Erbitux problems." The Cancer Letter article reported that the RTF letter detailed a long list of FDA concerns that went far beyond record keeping. The FDA was quoted as saying that ImClone's clinical trial was "not adequate and well controlled" and that additional studies would be needed. Moreover, the letter suggested that the FDA had warned ImClone starting in August 2000 that its data would have to demonstrate that Campostar, another cancer drug, was needed along with Erbitux. But the data submitted by ImClone was not sufficient to distinguish the effects of Campostar and Erbitux. Furthermore, the FDA cited protocol violations in the clinical trial, specifically the fact that ImClone only reported the deaths of three patients who died within a month of their last Erbitux treatment. The FDA found 21 patients who died within a month of their last Erbitux treatment. According to the January 8, 2002 New York Times, David Hines, president of the Avalon Research Group, said, "The FDA's communications with the company appear directly at odds with the statements made by the company in 2001." After the Cancer Letter report appeared, the price of ImClone shares fell further to open on January 7, 2002 at \$34.96 per share.

On January 9, 2002, after ImClone had lost nearly \$1.5 billion in market value since December 28 and after the filing of at least 11 federal class action suits, you attempted to explain the company's situation at the J.P. Morgan H&Q Healthcare conference. "What happened was that we put together a faulty package and we screwed up," you reportedly said. The principal problem, you said, was the company's failure to provide documentation demonstrating that the patients enrolled in ImClone's pivotal trial had met the eligibility criteria. On January 11, 2002, the Cancer Letter published an article on the conference and raised more questions about your explanations of what went wrong. For example, you said that the problems were caused by the Independent Response Assessment Committee (IRAC), a group of two radiologists and two oncologists who reviewed the data from the trial's sites. However, the Cancer Letter article cites Howard Ozer, director of Oklahoma University Cancer Center and Eason chair of oncology and hematology, who said blaming the review committee is disingenuous. "It is not the IRAC's fault," said Ozer, who reviewed the RTF letter for The Cancer Letter. "IRAC would have done whatever they were asked to do." The committee was working for the company, which means that the company bears the ultimate responsibility, Ozer said. "They would know when IRAC is

screwing up, and they would immediately report back." Ozer said. "Companies do it in self-defense, so this kind of thing doesn't happen."

Adding to the controversy are sales of stock by ImClone executives in the weeks just before FDA issued the RTF letter. According to the January 9, 2002 Wall Street Journal. ImClone's Chief Operating Officer, Harlan Waksal, disposed of 700,000 ImClone shares on December 6, valued at roughly \$71 a share or about \$50 million in total. On October 29, 2001, ImClone executives and directors sold a combined 2.1 million company shares to Bristol-Myers for \$150 million. You sold 814,674 shares and Harlan Waksal sold 776,450 shares, or just more than 20% of each of their holdings, in the first sale by either you or your brother since the mid-1990's. The sales were part of a tender offer by Bristol-Myers at the end of October in connection with the strategic agreement with ImClone. (In contrast to the \$ 2 billion agreement with Bristol-Myers for the US market, we note that it appears ImClone made only a \$60 million agreement with Merck KGaA for the right to market Erbitux outside North America and Japan, according to ImClone's 10-Q SEC filing). As part of the tender offer, you and your brother and other insiders - along with all other shareholders - were allowed to tender shares. However, according to the Wall Street Journal, ImClone lent money to insiders so they could acquire shares through the exercise of options at a time when discussions with Bristol-Myers "were well under way (having started in May) but weren't publicly disclosed." Along with you and your brother, ImClone extended loans to the company's chairman and another director, totaling \$35.2 million during July and August. As one observer noted in the Wall Street Journal article, that select insiders were able to borrow money from the company in order to acquire shares "puts shareholders at a disadvantage."

Given these recent reports, we have several serious concerns. Available information seems to conflict with ImClone's descriptions of the contents of FDA's RTF letter and its clinical research. The RTF letter is not a public document; investors only learned about the details from the excerpts of the RTF letter reported in the Cancer Letter. Without the Cancer Letter article, investors would have had to rely on ImClone's questionable descriptions of the RTF letter.

We are also interested in learning about the true nature of the pivotal clinical trial for Erbitux, and whether ImClone knew or should have known about the insufficiencies detailed in FDA's RTF letter. It is important that the hopes of cancer patients are not falsely raised and that the integrity of biomedical research is maintained. The available information demands that this Committee, which is entrusted with the oversight of public health and consumer protection laws, get additional information about ImClone and the Erbitux matter.

In light of these concerns, pursuant to Rules X and XI of the U.S. House of Representatives, please provide the following by January 31, 2002:

1. All records relating to communications about the FDA's December 28, 2001 refusal-to-file letter.

- 2. All records relating to meetings between FDA and ImClone Systems concerning Erbitux.
- 3. All records relating to study CP02-9923, especially the study protocol. Please identify the ImClone official responsible for coordinating with the Independent Response Assessment Committee. Please provide a list of all outside consultants or experts used by ImClone for study CP02-9923.

Please note that, for the purpose of responding to these requests, the terms "records" and "relating" should be interpreted in accordance with the attachment to this letter. In addition, we are requesting that following production of the records to the Committee, you make yourself available, as well as ImClone employees for Committee staff interviews as requested by Committee staff.

Thank you for your assistance. If you have any questions, please contact Alan Slobodin of the Majority Committee staff at (202) 225-2927.

Sincerely,

W.J. "BILLY" TAUZIN

CHAIRMAN<sup>®</sup>

AMES C. GREENWOOD

CHAIRMAN

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

cc: The Honorable John D. Dingell, Ranking Minority Member The Honorable Peter Deutsch, Ranking Minority Member Subcommittee on Oversight and Investigations

Attachment

#### **ATTACHMENT**

- 1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements. drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intraoffice and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
- 2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

## Appendix B

James F. Fitzpatrick
James\_Fitzpatrick@aporter.com
202.942.5878
202.942.5560 Fax
555 Twelfth Street, NW
Washington, DC 20004-1206

June 12, 2002

#### CONFIDENTIAL

The Honorable Jim Greenwood U.S. House of Representatives 2436 Rayburn House Office Building Washington, D.C. 20515-3808

The Honorable Peter Deutsch U.S. House of Representatives 2421 Rayburn House Office Building Washington, D.C. 20515-0920

Dear Congressmen Greenwood and Deutsch:

There have been press reports in connection with the sale of ImClone stock by our client Martha Stewart. I wanted to provide you with the following which will make clear that her actions had absolutely nothing to do with any nonpublic information about an imminent report from the Food and Drug Administration relating to ImClone. This information is based on a thorough review of the circumstances by Ms. Stewart's New York lawyers.

- 1. On December 27, 2001, Ms. Stewart sold 3928 shares in ImClone. This sale was the result of implementing an understanding reached about a month earlier with her broker that if ImClone shares were ever to sell below \$60 per share, she would sell. That decision had nothing to do with any information about ImClone; it was just a conventional method to protect against down-side market risk. On the 27th Ms. Stewart's broker called her. They had a brief conversation that ended at 1:41 p.m. The broker told Ms. Stewart that the shares had gone below \$60, and they agreed to sell the shares. This was done immediately; the brokerage records indicate Ms. Stewart's sell order entered the market at 1:43 p.m. and the stock was promptly sold pursuant to that order at about \$58 per share.
- 2. At no time did Ms. Stewart ever receive from anyone any information concerning any action by the FDA with regard to ImClone or any planned or imminent announcement by ImClone of any action by the FDA that was ultimately made public on the day after the sale, on December 28th. The sale noted above was prompted solely by a

Washington, DC New York Los Angeles Century City Denver London Northern Virginia

PHONE NO. : 2029425560

### ARNOLD & PORTER

The Honorable Jim Greenwood The Honorable Peter Deutsch June 12, 2002 Page 2

call from her broker based upon her preexisting understanding with him, and was not based upon any nonpublic knowledge or information about the FDA announcement or an FDA action in respect of ImClone.

3. Shortly after placing the order to sell her remaining ImClone shares, Ms. Stewart placed a call to Dr. Sam Waksal's office. She did not reach Dr. Waksal, and his assistant took a message from Ms. Stewart. On its face, the message confirms that Ms. Stewart knew nothing about what might be happening at ImClone. Dr. Waksal never returned the call.

I trust that this will clarify the sequence of events and the factors, which led to Ms. Stewart's decision to sell ImClone shares. As you can see, her transaction was entirely lawful.

Sincerely,

James F. Fitzpatrick

cc: The Honorable Billy Tauzin
The Honorable John D. Dingell

# Appendix C

James F. Fitzpatrick James\_Fitzpatrick@aporter.com

202.942.5878 202.942.5560 Fax

555 Twelfth Street, NW Washington, DC 20004-1206

June 18, 2002

The Honorable Jim Greenwood U.S. House of Representatives 2436 Rayburn House Office Building Washington, D.C. 20515-3808

The Honorable Peter Deutsch U.S. House of Representatives 2421 Rayburn House Office Building Washington, D.C. 20515-0920

Attn: Alan Slobodin

Dear Congressmen Greenwood and Deutsch:

In response to the Subcommittee's requests in connection with the sale of ImClone stock by our client Martha Stewart, we are providing the following information relating to Ms. Stewart's sale of her remaining ImClone shares on December 27, 2001. All of this confirms the information set forth in my prior letter to you of June 12.

1. Raytheon Travel Air Flight Log: On December 27, Ms. Stewart was en route by private jet from her home in Connecticut to Mexico for a holiday vacation. The enclosed flight log shows that Ms. Stewart's plane left Bridgeport, Connecticut at 8:17 am Central Standard Time ("CST") (or 9:17 am Eastern time), and made a refueling stop in San Antonio, Texas from 12:26 pm CST (or 1:26 pm Eastern time) to 13:01 CST (or 2:01 pm Eastern time), to refuel en route to a holiday vacation in Mexico.

While refueling in San Antonio, Ms. Stewart made three phone calls from her cell phone, outlined in 2 below with phone records attached.

2. Cell Phone Records for December 27: The attached cell phone records reflect the following three phone calls from

Washington, DC New York Los Angeles Century City Denver London Northern Virginia

Congressmen Greenwood and Deutsch June 18, 2002 Page 2

Ms. Stewart (please note that all times are CST (local time), as has been confirmed to us by a Verizon Wireless corporate accounts supervisor): (1) a one-minute call to her home answering machine from 12:30 to 12:31 pm CST (or 1:30 pm-1:31 pm Eastern time); (2) an eleven-minute call to her office in New York at 12:31 pm CST (or 1:31 pm Eastern time); and (3) a two-minute call to ImClone's offices from 12:41 pm CST (or 1:41 pm to 1:43 pm eastern time).

With regard to call (2), Ms. Stewart used the occasion of the refueling stop to call her office. After discussion of other business-related matters with her office, Ms. Stewart was informed that Mr. Peter Bacanovic, her broker at Merrill Lynch, had called and she was connected by her assistant through to Mr. Bacanovic during that same call. While on the phone with Mr. Bacanovic, she was informed that ImClone had traded down below the price of \$60 that she and Mr. Bacanovic had previously agreed would be a trigger to sell her remaining position, and she told Mr. Bacanovic to sell the shares. Merrill Lynch promptly thereafter entered an order to sell all of Ms. Stewart's shares, which order was executed (see item 3 below).

With regard to call (3), Ms. Stewart's cell phone records also show that after her call to her office (during which call she had her conversation with Mr. Bacanovic), Ms. Stewart called ImClone's offices. As we previously advised you in the June 12 letter, Ms. Stewart did not reach Dr. Waksal and left a message with his assistant. Dr. Waksal did not return her call.

3. Copy of Merrill Lynch Order Ticket: The document you have requested is a Merrill Lynch document, which we believe Merill Lynch would provide. We have been advised that the document shows that: (1) the end-of-day report, which is the Merrill Lynch equivalent of an order ticket, reflects that at 1:43 pm Eastern time, immediately

Congressmen Greenwood and Deutsch June 18, 2002 Page 3

after Mr. Bacanovic's call with Ms. Stewart ended, Merrill Lynch placed a sell order for Ms. Stewart's shares; and (2) that order was promptly executed, at approximately \$58 per share.

You had further inquired whether we know the name of the private attorney representing Mr. Bacanovic in connection with this matter. We are not aware of any such attorney, but we have been told that Richard Weinberg, Esq., of Merrill Lynch in New York City, may be contacted on Mr. Bacanovic's behalf. Mr. Weinberg's telephone number is 212-

As we said in our June 12 letter and as Ms. Stewart has stated publicly, Ms. Stewart did not receive any nonpublic information regarding ImClone prior to her sale, did not speak to Dr. Waksal on December 27 and sold her shares on that date based on her prior agreement with her broker to sell the remaining shares if the stock traded below \$60.

We hope the foregoing assists the Subcommittee in its review of the matter. Should you have any further questions, please do not hesitate to contact me.

Sincerely,

James P. Fitzpatrick

Enclosure

## Appendix D

#### AFFIDAVIT OF ANN E. ARMSTRONG

COUNTY OF NEW YORK	)
	: <b>\$S</b> :
State of New York	)
ANNE ARN	ISTRONG, being duly swom, deposes and says:

- I am voluntarity submitting this affidavit in order to provide information that I understand has been requested by the Oversight and Investigation Subcommittee of the House Committee on Energy and Commerce.
- I am personal assistant to the Executive Office at Martha Stewart Living Omnimedia, Inc. ("MSLO").
- 3. On Thursday, December 27, 2001, I was in the New York office of MSLO and, as part of my responsibilities, noted incoming phone messages for Martha Stewart, the Chief Executive Officer of MSLO, on a phone message log dated Thursday, December 27, 2001, a copy of which I understand has been previously provided to the Subcommittee. I recall that I arrived at my office that day at approximately 10:00 s.m. My best recollection is that the call from Peter Bacamovic reflected on the log came in some time between approximately 10:00 s.m. and 11:00 s.m. It is not my regular practice to note the time of such a call on my log.
- 4. I also recall that later that same day I connected Martha Stewart through to

  Mr. Bacanovic's office, and after making sure that she was connected through, I did not stay on the line

  and did not hear any subsequent part of her conversation.

  Ann E. Armstrong

Sworn to before me this 4th day

LAURA J. EDELSTEIN Motary Public, State of New York No. 02ED5056283 Queltied in Kings County Commission Expires March 4, 200. 2

## Appendix E

#### MARTHA STEWART / NYC MESSAGES THURSDAY, DECEMBER 27, 2001

Plum pudding was excellent! Thank

Peter Bacanovic thinks ImClone is going to start trading downward.

office asked if

could be on your helicopter

to the boat.
Find fact sheet.

wants to confirm a new date of shopping center opening in

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source of 4 tabletop lamps and chaise longue in

Gift of

## Appendix F

### YAHOO! FINANCE E

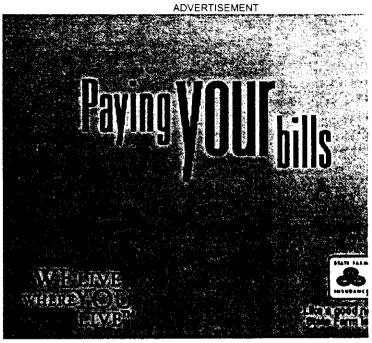
#### Historical Prices - IMCL (Imclone Systems Inc)

As of 27-Dec-01

More Info: Quote | Chart | News | Profile | Research | SEC | Msgs | Insider

Month         Day         Year           Start:         Dec ▼ 06         01           End:         Dec ▼ 27         01	<ul><li>C Daily</li><li>C Weekly</li><li>C Monthly</li><li>C Dividends</li></ul>
Ticker Symbol: imcl Ge	et Data

Date	Open	High	Low	Close	Volume	Adj. Close*
27-Dec-01	63.49	63.50	57.47	58.30	7,730,100	58.30
26-Dec-01	62.42	64.83	62.41	63.62	1,490,700	63.62
24-Dec-01	63.46	63.50	62.20	62.80	914,400	62.80
21-Dec-01	63.55	64.79	61.63	62.96	5,563,400	62.96
20-Dec-01	61.36	64.11	61.20	63.47	2,922,800	63.47
19-Dec-01	65.55	65.56	60.85	61.60	5,475,500	61.60
18-Dec-01	68.70	68.71	63.50	65.75	4,881,200	65.75
17-Dec-01	70.35	70.35	67.60	68.61	1.907,400	68.61
14-Dec-01	69.96	70.10	68.47	70.00	1,711,700	70.00
13-Dec-01	68.06	70.09	67.00	69.61	1,707,800	69.61
12 <b>-</b> Dec-01	70.39	70.55	66.41	68.14	1,447,400	68.14
11-Dec-01	70.55	72.94	69.65	70.39	5,105,100	70.39
10-Dec-01	70.57	72.70	70.18	70.25	1,074,300	70.25
7-Dec-01	71.98	72.14	70.25	70.45	1,638,800	70.45
6-Dec-01	74.77	75.45	71.82	71.94	1,209,200	71.94



#### **Download Spreadsheet Format**

\* adjusted for dividends and splits please see FAQ.

Questions or Comments?

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Historical chart data and daily updates provided by Commodity Systems, Inc. (CSI).

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88,76,61 12:25:48 11:61:51 12-44-58 96:88:61 86:35:61 12:58:30 12:55:04 61-11-91 98/20/91 12-05/45 98-29-14 10-19-11 ፈፀነውነቱ፤ 14:40:24 14:38:03 14:33:17 14/30/43 69:02:14 21/60/VI 13:66:81 184242 13:36:23 13/56/33 13:13:43 13:00:47 1S:5049 15V3333 7E.35.47 N 61 71 22:86:11 61144111 41752114 17-19-53 11 08-18 11:03:57 60.5.č.01 14-14. 01 10 52 12 10 12-20 10:00:24 10.02:52 80:81/6 940.23 6'30'05 3 63 62 9 59 æ, 56 3 5 25 7 ээіт4

IMCL Trading (12/27/01)

## Appendix G

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Merrill Lynch record of Aliza Waksal sale

## Appendix H

price-cutting campaign mpeting with Wal-Mart. t grient.

ed shortly afterwards curities and Exchange as well as an internal be, was investigating about its accounting. ns were raised in an

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leading up to its bankruptcy. The US attorney's office in the eastern district of Michigan also launched an inquiry involving FBI investigators. The FBI in Detroit confirmed vesterday that it was continuing to look into the company, but would not comment further

Kmart's accounting probe was

tinues, and Kmart in May suspended severance pay to a tinues. group of former executives pending the probe's outcome.

Executive pay, including retention loans totalling close to including \$30m to about 25 executives. IS understood to have become one of the focuses of both internal and

rest in stock - and a \$2m bonus in | By Jeremy Grant in Chicago 2001. When he was fired in March this year, he received a \$9.5m severance package including forgiveness of an earlier 15m retention

Mr Schwartz received a total of \$10.8m in his 16 months at Kmart. including a \$3m retention loan

## Insider trading investigation becomes 'he said/he said' game

The ImClone probe has pitted two men against each other, says Joshua Chaffin

he investigation into insider trading at imClone has largely devolved into a "he said he said" affair pitting Merrill Lynch stockbroker Peter Bacanovic against his assistant Douglas Faneuil.

Authorities appear to be relying on Mr Faneuil's version of events as they have ratcheted up their investigation into suspicious stock sales at the biotechnology company last December. They obtained an indict-

ment against Sam Waksal imClone founder, last week and now have Mr Bacanovic and Martha Stewart, his prized client, in their sights. However, the Merrill bro ker is likely to blame Mr Faneuil for passing inappropriate information about ImClone to Ms Stewart without his knowledge, according to people familiar with his defence. Mr Bacanovic also likely to charge that Mr Faneuil concocted a story for federal prosecutors in an effort to shield himself from possible criminal charges.

Mr Bacanovic's defence may not hold up as he and Ms Stewart try to extricate themselves from the most high-profile insider trading scandal in a decade.

Mr Waksal was arrested in June for allegedly trying to sell his own ImClone shares and also tipping off his family members, the day before the Food and Drug Administration rejected Erbitux, the company's cancer drug, on December 28. Authorities then began to probe whether Ms Stewart relied on information when she unloaded her ImCione stake the same day. Mr Waksal was an old friend and Mr Bacanovic served as a broker for both.

Ms Stewart has denied any wrongdoing and said that she had a standing agree-ment with Mr Bacanovic to sell the shares if they fell below \$60. But suspicions were aroused. First, the two clashed in their recollections of when the agreement was struck. She said November; he said late December. Then Merrill had no record of a formal stop-loss order entered into its computers.

The heaviest blow to Ms Stewart and Mr Bacanovic came from Mr Faneuil. After backing his boss during questioning in January, he later approached Merrill to alter his testimony.

Even if the government fails to prove its charges of insider trading, they may charge Ms Stewart and Mr Bacanovic with obstruction of justice.

According to people familiar with Mr Bacanovic's defence, the broker was sur-



prised in November when Ms Stewart transferred some ImClone shares from an account at Morgan Stanley to her portfolio at Merrill.

Mr Bacanovic urged Ms Stewart to get out of the stock. He had sold all but one of his clients' ImClone shares after an October tender offer from Bristol-Myers Squibb. which had just agreed with lmClone to jointly market Erbitux.

discussed ImClone again during a phone conversation late on December 21. The occasion was an end of year review of Ms Stewart's portfolio.

This time, Mr Bacanovic prevailed. With ImClone sagging, he convinced his client in a verbal agreement to sell her stake if the shares fell below \$60, these people say

Mr Faneuil would have unaware arrangement because he was on vacation when the conversation took place. Mr Faneuil's lawyer refused to comment

More germane to the case is Mr Bacanovic's version of events on December 27, the day the controversial sale took place. With Mr Bacanovic on vacation in Miami. Mr Faneuil was in charge.

Mr Waksal's daughter called that morning to sell her shares at 9:17am. Before the market opened at 9:30am. her father's accountant called and sent a fax requesting the same. At 9:51am Mr Bacanovic and Mr Faneuil spoke for four minutes, according to phone records Merrill handed over to the government. Between 10am and 11am, Mr Faneuil called Ms Stewart and left a message with her secretary stating that Mr Bacanovic believed ImClone was going to trade down that day

Ms Stewart was flying to Mexico and did not hear from her office until she landed in San Antonio that afternoon to refuel. She later called Mr Bacanovic's office spoke with Mr Faneuil and the trade was executed that afternoon. Mr Faneuil, has told prosecutors that he disclosed the Waksals' sales to Ms Stewart under orders from Mr Bacanovic, according to press reports

People close to Mr Bacanovic's defence claim he instructed Mr Faneuil to tell Ms Stewart to sell based solely on ImClone's falling stock price. "Peter has been in this business for 10 years," a friend of Mr Bacanovic's said. "There's no way he would tell someone what another client was doing

However, even if the press reports are accurate, it would not constitute insider trading: although passing on information about client sales might be unethical, it is hardly criminal.

Ford was adamant last month that it would not launch a "fire sale" on any of the businesses earmarked for the disposal of non-corassets expected to raise \$1ph this year

This included Kwik-Fit the European exhaust and maintenance commany that the world's second largest carmaker bought for \$100 m

But there was no trace from in its announcement vesterday that it had agree. to sell Kwik-Fit to CVC Capital Partners for his? £30m (\$505m) "We think the prinreflects what is the present market value of the bus ness Ford suin. When Ford bought the

business from Sir Farmer, the Scottish bus nessman who founded the Kwik-Fit tyres and exhausts chain in Edinburgh in the early 1970s, it clearly felgrowth prospects were good

But with the global ecnomic downturn, such hopes have been dashed. Ford said it would take an after-tax charge of about \$500m in the third quarter of 2002 related to the sale. The company is now focused on the far larger task of restoring its entire business to sustained profitability

The sale of Kwik-Fit is a small milestone in that process. It puts Ford within stri king distance of achieving its target of raising \$1bn in cash from asset sales

The fact that it has pulled the sale of the much smaller Hertz Equipment Rental Corporation shows that Ford's resources are now likely to be better used accelerating the company's restructuring

The task is to see plans to pump of products to North products in North Andread and reach years calls a product

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Mark Reuter a Ford

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### Disney to NYSE gui

Walt Disney, which has long faced criticism over its corporate governance, has been forced to admit it employed immediate family members of three suppos-edly "independent" directors

The US entertainment and media group said in a filing with the Securities and **Exchange Commission that** three directors - Stanley Gold. Raymond Watson and Reveta Bowers - had children employed by the company during the past year.

In recent corporate governance recommendations, the York Stock Exchange said a director should not be considered independent if a family member had worked for the company in the past five years.

Disney said it was considering "appropriate steps" to bring its board into line with the recommendations. "These steps will include a reduction in the board's size and reorganisation and reduction in size of board committees," the group said

The adoption of the NYSE recommendations would mean that the number of independent directors on Disney's 16-man board nominations committee as a result of the move. Mr Gold is also a member of the compensation and executive performance committees.

Raymond Watson, a longtime supporter of Mr Eisner, would be forced to surrender his membership of the audit and compensation committees.

Reveta Bowers would also have to give up her posts on the audit and compensation committees.

Last year Craig Bowers worked for Disney's internet operations, earning \$81,863, though he is no longer employed by the group. Jennifer Gold worked for its consumer products division, earning \$85,111. David Watson worked for the Disney Channel, earning \$152,608.

Cem Uzan to be

I SEMICONDUCTORS APPLIED MATERIALS SET TO REPORT FALLING MARKET DEMAND

Financial Times: August 13, 2002

## Appendix I

Sent: To: Subject: Thursday, December 27, 2001 1:18 PM
Faneuil, Douglas (ROCKEFELLER CENTER FL 860)
Imcl

Has news come out yet? Let me know. Thx, P

From:

Faneuil, Douglas (ROCKEFELLER CENTER FL 860)
Thursday, December 27, 2001 1:21 PM

Sent

To: Subject:

RE: imcl

Noting yet. I'll let you know. No call from Martha either.

### Appendix J

From:

Faneuil, Douglas (ROCKEFELLER CENTER FL 860)

Sent

Thursday, December 27, 2001 3:50 PM

To:

Subject:

IMCL sale

From-V L B M H

Dear Ms. Stewart,

You sold your remaining 3,928 IMCL shares at an average price of 58.4325. As always, feel free to call me with any questions at Peter's number, 212-382

Sincerely,

Douglas Faneuil

## Appendix K





#### CORPORATE Virtual network Service

IMCLONE SYSTEMS, SOMERVILLE, NU

BILLING PERIOD | DEC 11 - UAN 10 | 2001

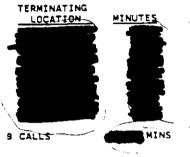
#### CALL DETAIL REPORT

ACCOUNT CODE: OUTBOUND ORIGINATING NUMBER:

ACCOUNT NAME: UNASSIGNED

TIME DATE 10:14:40AM 12/14 10:58:37AM 12/14 12/14 12:02:49PM 12/27 9:04:354M 11:24.15AM 12/28 3:51:0524 01/02 9:46:50AM 01/04 2.36.36⊃₩ 01/08 10:50:44AM 01/10 TOTAL







ORIGINATING NUMBER:

DATE	TIME							
12/11	4.05:48PM							
12/13	3.02 1624							
12/14	10:57.50AM							
12/14	3:38:30PM							
12/14	4.38:43PM							
12/15	11;28:12AM							
12/28	12:04.31PM							
01/03	12:42 26PM							
01/09	MA80: 1E:8							
01/09	10-48-12AM							
01/10	10:06 20AM							
01/10	10:48.35AM							







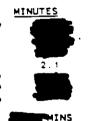
TOTAL 212-645-4188

ORIGINATING NUMBER:

DATE	TIME
12/14	3:38:00PM
12/15	10:46:06AM
12/15	11:12:48AM
12/19	11:43:50AM
12/20	2:58:15PM
12/22	12:48:55PM
01/04	9:31:10AM
01/05	8:34:17AM





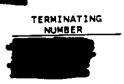




TOTAL	212-645-4648	Ì

ORIGINATING NUMBER:

DATE	TIME
12/12	10:21:21AM
12/13	4:45:50PM
12/19	3:55:42PM
12/20	9:57:18AM











### Appendix L

### Samuel Waksal's message log

### **MESSAGES**

### December 21, 2001

9:51

10:15

10:47

11:30

11:47

11:50

11:50

11:50

1:50

Martha's number in Mexico from Dec 27-Jan2 is 011 52 11440300

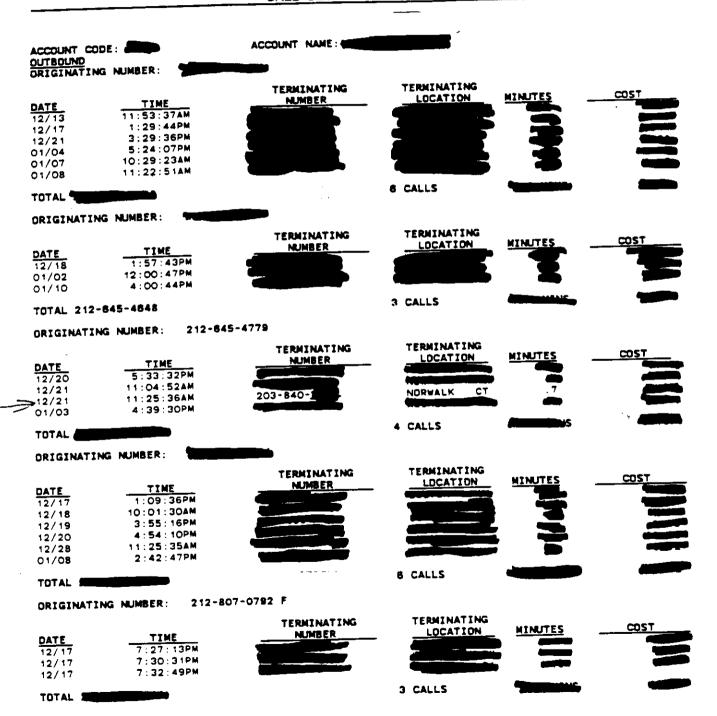


#### CORPORATE Virtual network Service

IMCLONE SYSTEMS. SOMERVILLE. NJ

BILLING PERIOD: DEC 11 - JAN 10, 2002

#### CALL DETAIL REPORT



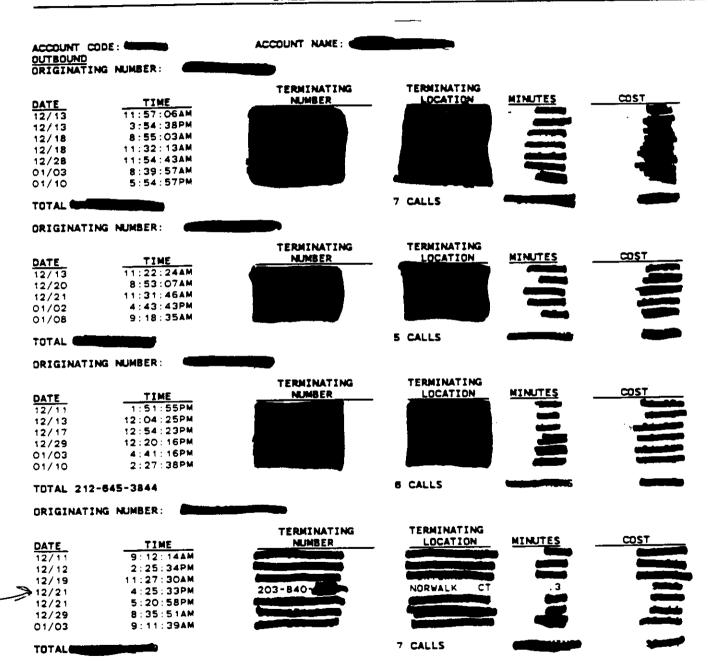


CORPORATE Virtual network Service

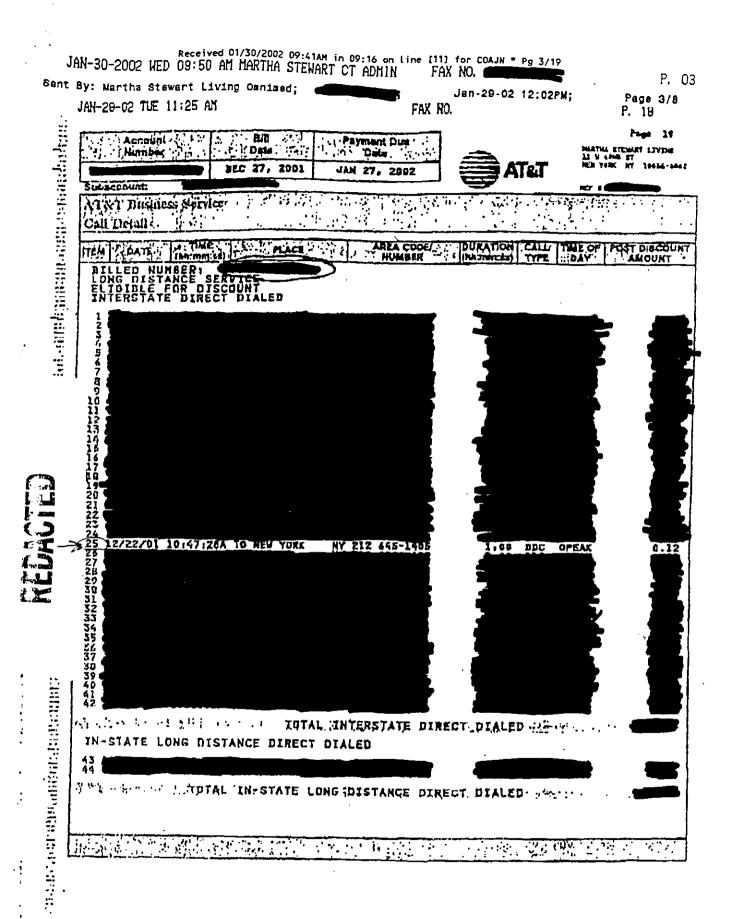
IMCLONE SYSTEMS, SOMERVILLE, NJ

BILLING PERIOD: DEC 11 - JAN 10, 2002

#### CALL DETAIL REPORT



# Appendix M



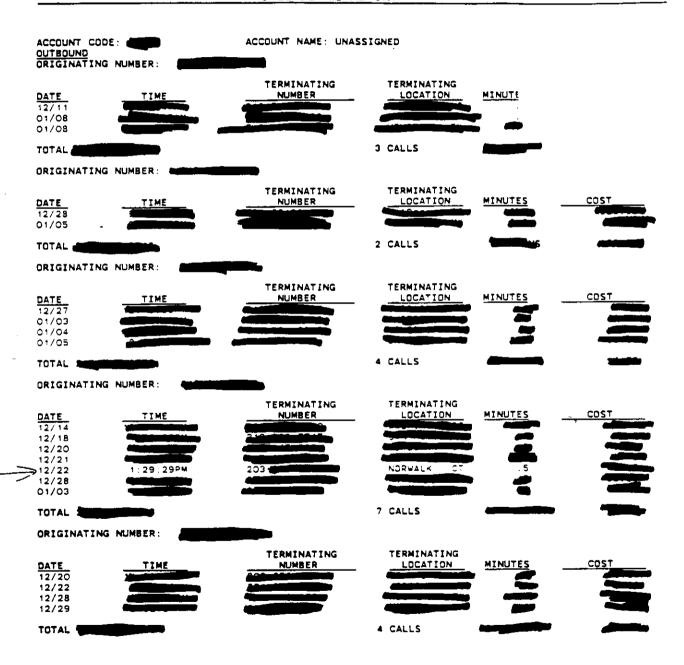


CORPORATE Virtual network Service

IMCLONE SYSTEMS, SOMERVILLE, NJ

Billing PERIOD DEC 11 - UAN 10, 2001

#### CALL DETAIL REPORT



## Appendix N





12/21

#### CORPORATE Virtual network Service BILLING PERIOD DEC 11 - UAN 10, 2001 IMOLONE SYSTEMS, SOMERVILLE, NJ ENY CALL DETAIL REPORT ACCOUNT CODE: OUTBOUND ORIGINATING NU DATE 12/18 COST 12/18 01/08 TOTAL 212-645-ORIGINATING NUMBER: TERMINATING DATE 12/,12 MINUTES COST TIME LOCATION 12/14 12/15 12/19 12/28 TOTAL 5 CALLS ORIGI **TERMINATING** DATE LOCATION MINUTES COST 12/14 12/15 12/20 12/28 TOTAL 21 4 CALLS ORIGINAT TERMINATING DATE 12/13 MINUTES COST LUCATION 12/21 01/03 TOTAL 212-645 3 CALLS ORIGINATING N TERMINATING TERMINATING LOCATION COST DATE TIME MINUTES 5:28:42PM FAIRFIELD CT TOTAL 1 CALLS .8 MINS ORIGINATING NUMBER: **TERMINATING** DATE TIME LOCATION MINUTES COST 12/17



Merrill Lynch phone record for Douglas Faneuil phone number <del>>-</del>1227 0949 0004 1646 ⇒1227 0954 0011 >1227 0956 0013 1646 1646 1646

## Appendix O

Statement For: PETER E. BACANOVIC

Mobile Number: ( ) Account Number:

Customer Service Number 1-800-937-8997

Jan 11, 2002

Page 17 of 3-

ite	Call Destination	Time	Number Called	Call Type	Minutes		Airtime Charges		Toll Charges		Additional Charges		Total
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all Type: (A) Call Waiting (B) Call Forward (C) Conference Call (D) Text Message (E) Data/Fax (F) Mobile2Mobile (G) Voicemail (H) Free Calls Internat'l Call

## Appendix P

Billing Date: Customer Account No:

January 12, 2

### Continued from previous page

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## Appendix Q

### Samuel Waksal's message log

### **MESSAGES**

December 27, 2001

10:09

10:25

11:05

11:20

11:58

12:57

1:00

1:26

1:34

1:43 Martha Stewart something is going on with ImClone and she wants to know what She is on her way to Mexico she is staying at Los Ventanos



## Appendix R

### Merrill Lynch account statement

Positions P/L View By Security

Page 1 of 1

Household:STEWART, MARTHA BOSS ID Selected Accounts: Unrealized Gain/(Loss) Summary By Security Filters: Off As Of COB Date: 12/20/2001 Note: Positions are net and cost basis excludes fractional shares Unit Security COB Cost Mkt Qty Unreal Cost Price Basis Value P/L MELONE SYSTEMS INC COME